Plesco, Inc. *and* Food Drivers, Helpers and Warehousemen Employees of Philadelphia and Vicinity and Camden and Vicinity, Local Union No. 500 a/w International Brotherhood of Teamsters, AFL–CIO. Case 4–CA–21829

November 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge and an amended charge filed by Food Drivers, Helpers and Warehousemen Employees of Philadelphia and Vicinity and Camden and Vicinity, Local Union No. 500 a/w International Brotherhood of Teamsters, AFL–CIO, the Union, on June 25 and July 29, 1993, respectively, the General Counsel of the National Labor Relations Board issued a complaint on August 31, 1993, against Plesco, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On October 22, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On October 26, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 16, 1993, notified the Respondent that its answer was overdue and that, unless an answer were received by September 27, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file any answer,[1] we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] Although a copy of the complaint was returned to the Regional Office marked "unclaimed," the Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation, with an office and place of business located in Philadelphia, Pennsylvania, has been engaged in the business of wholesale food distribution. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its facility goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All drivers and warehouse employees, excluding all clericals, supervisors, guards, and all others as defined in the Act.

Since on or about April 15, 1993, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a recognition agreement dated April 15, 1993.

At all times since on or about April 15, 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

In or about early April 1993, the Respondent, by its president and part owner, Anthony Wong, at the facility, interrogated an employee about the employee's union activities and sympathies and the union activities and sympathies of other employees.

The Respondent, by part owner George Nassis, engaged in the following conduct at the facility:

(a) In or about the week beginning April 16, 1993, threatened to cause employees to "get in trouble with the IRS" because they selected the Union as their collective-bargaining representative.

(b) On or about April 16, 1993, threatened to inflict bodily injury upon an employee because the Respondent's employees selected the Union as their collective-bargaining representative.

(c) On or about April 20, 1993, threatened to promote an employee to a supervisory position and thereafter discharged the employee because the employee supported and assisted the Union.

(d) In or about late April 1993, interrogated an employee about the employee's union activities and sympathies, and created an impression among its employees that their union activities were under surveillance by the Respondent by telling an employee that the Respondent knew about the employee's union activities.

(e) In or about mid-May 1993, threatened to discharge employees because they selected the Union as their collective-bargaining representative.

In or about the week beginning April 18, 1993, by part owners Nassis and Demetrios Mantzeridis at the facility, threatened its employees with discharge because they selected the Union as their collective-bargaining representative.

In or about April 1993, the Respondent, by Wong, Nassis, and Mantzeridis, at the facility, told an employee that the Respondent would like to discharge certain employees because the employees supported and assisted the Union.

On or about June 18, 1993, the Respondent laid off its employee, Stanley Smalley. Although this subject relates to the wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining, the Respondent laid off Smalley without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the layoff.

CONCLUSION OF LAW

By interrogating, threatening, and creating the impression of surveillance among employees, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. In addition, by laying off Stanley Smalley without notice to or bargaining with the Union, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by laying off Stanley Smalley on June 18, 1993, without notice to or bargaining with the Union, we shall order the Respondent to offer Smalley immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Plesco, Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about employee union activities and sympathies; threatening to cause employees to "get in trouble with the IRS" because they selected the Union as their collective-bargaining representative; threatening to inflict bodily upon employees because its employees selected the Union as their collective-bargaining representative; threatening to promote employees to a supervisory position and thereafter discharge them because they supported and assisted the Union; creating an impression among its employees that their union activities were under surveillance by the Respondent by telling employees that the Respondent knew about their union activities; threatening to discharge employees because they selected the Union as their collective-bargaining representative; and telling employees that the Respondent would like to discharge certain employees because they supported and assisted the Union.

(b) Failing and refusing to bargain with Food Drivers, Helpers and Warehousemen Employees of Philadelphia and Vicinity and Camden and Vicinity, Local Union No. 500 a/w International Brotherhood of Teamsters, AFL–CIO, as the exclusive representative of the employees in the following unit, by laying off employees without prior notice to the Union and without affording the Union an opportunity to bargain over the layoff:

> All drivers and warehouse employees, excluding all clericals, supervisors, guards, and all others as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Stanley Smalley immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss

of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, in the manner set forth in the remedy section of this Decision and Order.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 23, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees about employee union activities and sympathies; threaten to cause employees to "get in trouble with the IRS" because they selected the Union as their collective-bargaining representative; threaten to inflict bodily upon employees because employees selected the Union as their collective-bargaining representative; threaten to promote employees to a supervisory position and thereafter discharge them because they supported and assisted the Union; create an impression among employees that their union activities were under surveillance by the Company by telling employees that the Company knew about their union activities; threaten to discharge employees because they selected the Union as their collective-bargaining representative; and tell employees that the Company would like to discharge certain employees because they supported and assisted the Union.

WE WILL NOT fail and refuse to bargain with Food Drivers, Helpers and Warehousemen Employees of Philadelphia and Vicinity and Camden and Vicinity, Local Union No. 500 a/w International Brotherhood of Teamsters, AFL–CIO, as the exclusive representative of the employees in the following unit, by laying off employees without prior notice to the Union and without affording the Union an opportunity to bargain over the layoff:

> All drivers and warehouse employees, excluding all clericals, supervisors, guards, and all others as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer laid-off employee Stanley Smalley immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct.

PLESCO, INC.